

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Tequan L. Brown,)	
)	
Plaintiff,)	
)	Civil Action No. 0:18-cv-3347-TMC
v.)	
)	ORDER
Jim May; Jeffrey Long; Jeffery Scott;)	
Charles Williams,)	
Defendants.)	

Plaintiff, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this action was referred to a magistrate judge for pretrial handling. On June 25, 2019, Defendant Williams filed motion to dismiss. (ECF No. 94). On July 24, 2019, Defendant Williams and Defendant Scott filed a joint motion for summary judgment. (ECF No. 111). As to each of the motions, the court entered orders pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment and dismissal procedures and the potential consequences if he failed to respond adequately to the motions. (ECF Nos. 97, 112). Because Plaintiff filed no response to either motion in the time allotted, the court issued an order directing Plaintiff to advise the court whether he wished to proceed with the case. (ECF No. 118). The court warned Plaintiff that failure to respond would result in the case being recommended for dismissal for failure to prosecute. *Id.* On September 23, 2019, Plaintiff filed a motion to voluntarily dismiss Defendants Long, Scott, and Williams. (ECF No. 120). Defendants Scott and Williams do not object to Plaintiff's motion, but they request that the dismissal be with prejudice. (ECF No. 122). Before the court is the magistrate judge's Report and Recommendation ("Report"), which recommends that the court dismiss Defendants Long and May from the case without prejudice

pursuant to Fed. R. Civ. P. 4(m); that the court conditionally grant Plaintiff's motion to voluntarily dismiss Defendants Scott and Williams; and that the court terminate all other motions. (ECF NO. 123). The parties were advised of their rights to file objections to the Report. *Id.* However, no party has filed objections, and the time to do so has now run.

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). In the absence of objections, this court is not required to provide an explanation for adopting the Report. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

After a careful and thorough review of the record under the appropriate standards, as set forth above, the court adopts the magistrate judge's Report (ECF No. 123), which is incorporated herein by reference. Accordingly, Defendants Long and May are **DISMISSED** from this matter without prejudice, pursuant to Fed. R. Civ. P. 4(m). Additionally, the court **CONDITIONALLY GRANTS** Plaintiff's motion to voluntarily dismiss Defendants Scott and Williams (ECF No. 120). Such dismissal as to Defendants Scott and Williams is subject to the following conditions: (1) if Plaintiff files an action based on or including the same claims against the same defendants in the future, the defendants may seek costs from this action pursuant to Fed. R. Civ. P. 41(d); and (2) any discovery materials or other evidence obtained during the course of the litigation of this matter may also be used in any subsequent matter between the parties. *See Davis v. USX Corp.*, 819 F.2d

1270, 1276 (4th Cir. 1987). Furthermore, all other pending motions, (ECF Nos. 65, 94, 111) are **TERMINATED as moot.**

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
October 28, 2019

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.